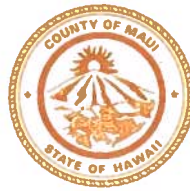


MICHAEL P. VICTORINO  
Mayor

MICHELE CHOUTEAU MCLEAN, AICP  
Director

JACKY TAKAKURA  
Deputy Director




**DEPARTMENT OF PLANNING**  
COUNTY OF MAUI  
ONE MAIN PLAZA  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793

November 22, 2022

**MEMORANDUM**

TO: MS. P. DENISE LACOSTA, Chair  
and Members of the Maui Planning Commission

FROM: MICHELE CHOUTEAU MCLEAN, AICP, Planning Director 

SUBJECT: **ADDITIONAL PROPOSED AMENDMENTS TO THE MAUI  
PLANNING COMMISSION'S SPECIAL MANAGEMENT AREA  
(SMA) AND SHORELINE RULES (ITEM B.3)**

After transmitting to the Maui Planning Commission (Commission) the Department of Planning's (Department) final proposed amendments to the Commission's SMA and Shoreline Rules, the Department continued its outreach efforts with individuals, community and professional groups, and other stakeholders. The result of this effort, reviewed by some of the Department's Shoreline Team, is several proposed minor modifications to the proposed rule amendments, as follows:

**Special Management Area Rules**

1. Amend the definition of "cumulative impact" or "cumulative effect" (p. 202-4 of both versions) as follows: "Cumulative impact" or "cumulative effect" means the ~~[impact]~~ significant effect on the environment that results from the incremental impact of the proposed action...."

**Rationale:** the assessment of cumulative impacts relates to detrimental or adverse impacts, not neutral or beneficial impacts.

2. Amend the definition of "nonstructural improvement" (p. 202-5 of the "clean" version and p. of the "redline" version) as follows: "Nonstructural improvement" or "nonstructural" is or describes any improvement, maintenance, repair[s] or renovation[s] which does not materially alter the load-bearing components essential to the stability of the overall structure...."

**Rationale:** this will allow for alterations such as painting or refinishing.

**3. Amend the definition of “shoreline”** (p. 202-6 of the “clean” version and p. 202-7 of the “redline” version) **as follows:** ““Shoreline”, as defined in HRS section 205A-1 as amended, means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of ~~[natural rather than artificially induced]~~ vegetation growth, or the upper limit of debris left by the wash of the waves ~~[that has been certified by the board of land and natural resources for a duration determined by the board].”~~”

**Rationale:** if amended as recommended, the definition would follow the exact wording as the definition provided in HRS 205A-1. Deleting the reference to vegetation would not change how the rule is administered, and deleting the shoreline certification would facilitate the administration and enforcement of the proposed Shoreline Rules amendments.

**4. Amend the definition of “significant effect”** (p. 202-6 of the “clean” version and p. 202-7 of the “redline” version) **as follows:** “Significant effect” means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, ~~[are contrary to the County’s or State’s environmental policies or long-term environmental goals as established by law,]~~ or adversely affect the economic welfare, social welfare or cultural practices of the community.”

**Rationale:** this language is over-reaching, given how broad many of the policies in our long-range plans are; projects will still be assessed for potential impacts and plan consistency.

**5. Amend Section 12-202-11.5** (p. 202-9 of the “clean” version and p. 202-10 of the “redline” version) **as follows:** “Those who propose any use, activity or operation pursuant to subsections k, l and m below in the special management area must complete, and submit to the department before the use, activity or operation is initiated, a declaration form, provided by the department and made accessible to the public, that may establish action-specific Best Management Practices and other appropriate restrictions.”

**Rationale:** the declaration must be submitted before the action is taken.

**6. Amend Section 12-202-16(a) and (c)** (pp. 202-18 and 19 of the “clean” version and pp. 202-22 and 23 of the “redline” version) **as follows:** change back to “...danger ~~[and]~~ or substantial harm...”

**Rationale:** the threshold for emergency permits should be for danger or substantial harm, not both.

**7. Amend Section 12-202-32(d)(1)** (p. 202-25 of the “clean” version and p. 202-32 of the “redline” version) **as follows:** “If, after a reasonable effort has been made to provide service at least two times by any method provided herein, and is documented by the director, and the owner and alleged violator have not been serviced, the director may provide service by publishing the notice once per week for three consecutive weeks....”

**Rationale:** to ensure compliance with applicable law, service of notices of violation should be attempted twice before posting in the newspaper.

### **Shoreline Rules**

**1. Amend the definition of “nonconforming structure”** (p. 203-6 of the “clean” version and p. 203-8 of the “redline” version) **as follows:** ““Nonconforming structure/activity, lawful” means a structure or activity [~~which was lawfully existing or established outside the shoreline area when it was originally constructed or initiated and is now inside the~~] within the shoreline area and which [~~either~~] (1) was built or initiated prior to June 22, 1970 or (2) received all applicable and required permits....”

**Rationale:** The proposed amendment simplifies and clarifies the definition.

**2. Amend the definition of “shoreline”** (p. 202-7 of the “clean” version and p. 202-10 of the “redline” version) **in the same manner as described in the SMA Rules (see #3 above).**

**3. Amend Sections 12-203-6(b) and 12-203-12(a)(7)(F)** (p. 203-10 of the “clean” version and p. 203-15 of the “redline” version) **by deleting:** “[~~Any approval granted under this section shall include conditions that the owner of the property shall not implement measures that result in shoreline hardening and that conditions of approval shall be recorded with the Bureau of Conveyances.~~]”

**Rationale:** The rules should not prohibit someone from pursuing an action that they may wish to take in the future; the Department can require conditions to be recorded on a case-by-case basis.

**4. Amend Section 12-203-10** (p. 202-11 of the “clean” version and p. 203-17 of the “redline” version) **as follows:** “Those who propose any use, activity, or operation pursuant to subsections g, h, i, j, and k below in the shoreline area must complete and submit to the department before the use, activity or operation is initiated a declaration form as provided by the department and made accessible to the public, that may establish action-specific Best Management Practices and other appropriate restrictions[;].”

**Rationale:** the declaration must be submitted before the action is taken.

**5. Amend Section 12-203-12(a)(7)** (p. 203-15 of the “clean” version and p. 203-21 in the “redline” version) **as follows:** “... in manner that is proportional and directly related to damage by fire, insects, episodic natural disaster, accidental means, or ~~other~~ calamity....”

**Rationale:** the current language suggests that insects, for example, are a calamity.

**6. Amend Section 12-203-16(d)(1)** (p. 203-24 of the “clean” version and p. 203-33 of the “redline” version) **relating to service of NOVs, in the same manner as the SMA Rules (see #7 above).**

**Regarding Section 12-203-12(a)(5), (6) and (7),** the Department acknowledges that there is some degree of overlap, particularly if a valuation limit is imposed on section (7). When considering whether to impose a valuation limit on section (7), the Commission may also want to carefully consider whether to combine (5) and (6) and what, if any, valuation limit should be imposed. On one hand, property owners should be cautious in reinvesting substantially in properties within the shoreline setback; on the other hand, reinvestment should not be strongly discouraged.

Lastly, the Department requests that the Commission consider amending both sets of rules so that the order of the “no needs” are the same (Section 12-202-11.5 of the SMA Rules and Section 12-203-10 of the Shoreline Rules).

The Department recommends that the Maui Planning Commission approve the proposed amendments to the SMA and Shoreline Rules with the additional proposed amendments listed above.

MCM:atw